

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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STERLING A., a minor, by his Guardians Ad  
Litem, KEVIN ANDREWS and HEATHER  
ANDREWS,

Plaintiffs,

v.

WASHOE COUNTY SCHOOL DISTRICT,

Defendant.

3:07-CV-00245-LRH-RJJ

ORDER

Presently before the court is Plaintiffs Sterling A., et al.'s (collectively, "Plaintiffs") Opening Brief on Appeal (#34<sup>1</sup>). Defendant Washoe County School District ("WCSD") has filed an answer (#35), to which Plaintiffs replied (#38).

**I. Facts and Procedural History**

This is a civil action brought pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* Sterling A. ("Sterling") was born on October 14, 2003, to Kevin and Heather Andrews. (Admin. R. at 224.) Soon after his birth, Sterling was diagnosed with profound bilateral hearing loss. *Id.* On October 15, 2004, doctors implanted a Cochlear Americas Nucleus 24 Contour Advance implant into his right ear. *Id.*

On April 20, 2004, the Brea Olinda Unified School District in California determined that

<sup>1</sup> Refers to the court's docket number.

1 Sterling was eligible for IDEA services. (Admin. R. at 224.) Pursuant to an Individualized Family  
2 Service Plan (“IFSP”), Sterling received IDEA services in California from April 20, 2004, through  
3 October 13, 2006. *Id.*

4 On October 13, 2006, the Brea Olinda Unified School District developed an Individualized  
5 Education Plan (“IEP”) for Sterling (“California IEP”). (Admin. R. at 225.) From October 14,  
6 2006, through November 16, 2006, Sterling received the IDEA services provided for in the IEP,  
7 including one-on-one Deaf and Hard of Hearing (“DHH”) services and speech and language  
8 services at Plaintiffs’ home. *Id.*

9 On October 30, 2006, Plaintiffs notified WCSD that they would be moving to Reno,  
10 Nevada and requested a meeting to discuss Sterling’s IEP. (Admin. R. at 225.) On November 17,  
11 2006, Plaintiffs relocated to Reno, Nevada, and on November 20, 2006, they met with  
12 representatives of WCSD to discuss Sterling’s potential for receiving IDEA services in Nevada. *Id.*  
13 At the meeting, WCSD adopted an interim IEP. (Admin. R. at 23:8-11.)

14 Pursuant to Nevada law, the interim IEP was to last for approximately thirty (30) days, from  
15 November 27, 2006, through December 21, 2006. (Admin. R. at 30:23-25.) During this thirty (30)  
16 day period, WCSD was to determine Sterling’s eligibility for IDEA benefits in the state of Nevada.  
17 (Admin. R. at 31:3-7.) Upon a determination that Sterling was eligible, WCSD would create an  
18 annual IEP. (Admin. R. at 31:6-7.) WCSD did not question Sterling’s eligibility for IDEA benefits  
19 in the state of Nevada. (Admin. R. at 31:8-10.)

20 The primary difference between the California IEP and the interim IEP was the location of  
21 the services to be provided. (Admin. R. at 23:19-25.) The interim IEP stated that WCSD would  
22 provide speech and language services at Sterling’s local school, Hunsberger Elementary. Plaintiff’s  
23 do not object to the speech and language service being provided at the school. (Admin. R. at 226.)  
24 Instead, the dispute in this case arose out of the interim IEP’s provision for DHH services at  
25 Sterling’s local school, rather than at Plaintiffs’ home. (Admin. R. at 23:19-25.) Under the  
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1 California IEP, DHH services had been provided at Plaintiffs' home. (Admin. R. at 225.)

2 In reviewing the California IEP and creating the interim IEP, WCSD concluded that  
3 "providing [speech and language and DHH] services in an educational setting would be the most  
4 appropriate." (Admin R. at 24:14-14.) To make this determination, WCSD reviewed the  
5 California IEP and contacted the teacher who provided services to Sterling in California. (Admin.  
6 R. 24:16-17.) The teacher indicated that she provided DHH services in Sterling's home because  
7 Sterling was enrolled at a parochial preschool, for convenience, and because the home offered "no  
8 real distractions." (Admin. R. at 324.) Nonetheless, she noted that if it was requested or if the  
9 home environment was not working out, she would move the DHH services to the school. *Id.*

10 In addition, WCSD considered its need for access to peer models for evaluation purposes,  
11 and Hunsberger Elementary would have allowed WCSD to access appropriate language models.  
12 (Admin. R. at 25:1-7.) Finally, it was WCSD policy to provide home services only to medically ill  
13 children. (Admin. R. at 398.) Thus, WCSD declined to provide DHH services at Plaintiff's home.  
14 *See* (Admin. R. at 394.) Instead, WCSD offered to provide DHH services at Hunsberger  
15 Elementary three times per week for forty-five minutes per session. (Admin. R. at 393.)

16 In accordance with the interim IEP, Sterling began receiving speech and language services  
17 at Hunsberger Elementary one time per week for thirty minutes. However, on December 13, 2006,  
18 Plaintiffs informed WCSD that they found the room chosen for Sterling's weekly one-on-one  
19 sessions inappropriate. (Admin. R. at 296-97.) For example, Plaintiffs noted that the room posed  
20 safety concerns in the form of exposed electrical outlets and free standing objects. *Id.* Moreover,  
21 Plaintiffs noted that the room was not soundproofed, and there were audible and distracting noises  
22 entering the room. *Id.* In addition, Plaintiff's were concerned that the florescent lights in the room  
23 might interfere with Sterling's cochlear implant. *Id.* As a result of Plaintiffs' concerns, on  
24 December 16, 2006, WCSD provided a new room. *Id.*

25 Although Plaintiffs took Sterling to Hunsberger Elementary for speech and language  
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1 therapy, they refused to take him to the school for DHH therapy. Instead, following the meeting on  
2 November 20, 2006, Plaintiffs contracted with Carrie Austin, a private provider, for DHH services  
3 at Plaintiffs' home. (Admin. R. at 225.) On November 22, 2006, Plaintiffs asked WCSD to  
4 reimburse them for the out-of-pocket expenses incurred in hiring Ms. Austin. (Admin. R. at 225.)  
5 From November 20, 2006, through January 11, 2007, Ms. Austin conduct twenty-two (22) one-  
6 hour DHH sessions. (Admin. R. at 302.) She charged \$85.00 per hour. (Admin. R. at 302.)

7 Because Plaintiffs have refused to make Sterling available for DHH services at Sterling's  
8 local school, WCSD has been unable to complete the assessments of Sterling necessary to  
9 determine his eligibility for special education services under Nevada law. As a result, at the time of  
10 the hearing before the HO, WCSD had not developed an annual IEP for Sterling. It is not clear  
11 whether WCSD has developed an annual IEP for Sterling to date.

12 As a result of WCSD's refusal to provide DHH services in their home, on November 30,  
13 2006, Plaintiffs requested a due process hearing. (Admin. R. at 187.) The due process complaint  
14 alleged that, by refusing to replicate the California IEP with regard to the at-home DHH services,  
15 WCSD had failed to provide Sterling a Free and Appropriate Public Education ("FAPE") in  
16 violation of IDEA. (Admin. R. at 188.) Plaintiffs also requested reimbursement for the costs of  
17 contracting with the private provider of DHH services (Admin. R. at 189.)

18 On January 17, 2007, the Hearing Officer ("HO") conducted a due process hearing. On  
19 February 9, 2007, the HO issued her decision, concluding that "despite the change in the physical  
20 location of the [DHH] services, [WCSD] offered comparable DHH services in a distraction-free  
21 environment." (Admin. R. at 285.) Because it found the interim IEP to provide services  
22 comparable to the California IEP, the HO concluded that the interim IEP did not deny Sterling a  
23 FAPE. *Id.*

24 Plaintiffs appealed the HO's decision. (Admin. R. at 523.) On April 25, 2007, a State  
25 Review Officer ("SRO") affirmed. (Admin. R. at 476-84.) On May 22, 2007, Plaintiffs initiated  
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1 this appeal.

## 2 **II. Legal Standard**

3 IDEA was enacted “to ensure that all children with disabilities have available to them a free  
4 appropriate public education that emphasizes special education and related services designed to  
5 meet their unique needs and prepare them for further education, employment, and independent  
6 living.” 20 U.S.C. § 1400(d). “An appropriate public education does not mean the absolutely best  
7 or potential-maximizing education for the individual child . . . The states are obliged to provide a  
8 basic floor of opportunity through a program individually designed to provide educational benefit  
9 to the handicapped child.” *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1524 (9th Cir. 1994) (citations  
10 and internal quotations omitted).

11 In case of a dispute between the school district and the parents, IDEA permits the parents of  
12 disabled children to “present a complaint . . . with respect to any matter relating to the  
13 identification, evaluation, or educational placement of the child, or the provision of a free  
14 appropriate public education to such child.” 20 U.S.C. § 1415(b)(6). The statute provides that a  
15 parent who submits such a complaint “shall have an opportunity for an impartial due process  
16 hearing.” 20 U.S.C. § 1415(f)(1)(A). IDEA further permits any party aggrieved by the finding and  
17 decision in the due process hearing to file a civil action in state or federal court. 20 U.S.C. §  
18 1415(i)(2). In any action seeking judicial review of the administrative decision, “the court . . . (i)  
19 shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the  
20 request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant  
21 such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(C).

22 Judicial review of a state hearing officer’s decision involves two steps. *Smith*, 15 F.3d at  
23 1524. “First, the court must determine whether the rigorous procedural requirements of IDEA have  
24 been met. Second, the court must determine whether the state has met the substantive component  
25 of IDEA - the requirement that the state provide an ‘appropriate’ education.” *Id.* (citing *Bd. of*  
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1 *Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 206-07  
2 (1982)).

3 The standard of review to be conducted pursuant to IDEA has been described as a  
4 “modified *de novo* review.” *S.H. v. State-Operated Sch. Dist. of City of Newark*, 336 F.3d 260, 270  
5 (3d Cir. 2003); *see also Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001)  
6 (“Complete *de novo* review . . . is inappropriate.”). This modified *de novo* review requires the  
7 district court to give “due weight” to the hearing officer’s decision. *Capistrano Unified Sch. Dist.*  
8 *v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995). This court cannot substitute its notion of sound  
9 educational policy for those of the school authorities. *Ojai Unifed Sch. Dist. v. Jackson*, 4 F.3d  
10 1467, 1472 (9th Cir. 1993). The amount of deference due to state educational agencies is a matter  
11 for discretion of the courts. *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir.  
12 1987). However, “the amount of deference bestowed upon the hearing officer is increased where  
13 her findings are ‘thorough and complete.’” *Adams v. State of Oregon*, 195 F.3d 1141, 1145 (9th  
14 Cir. 1999) (quoting *Smith*, 15 F.3d at 1524). “The burden of proof in an administrative hearing  
15 challenging an IEP is properly placed upon the party seeking relief.” *Schaffer v. Weast*, 546 U.S.  
16 49, 67 (2005).

### 17 **III. Discussion**

18 This appeal requires the court to determine whether a preponderance of the evidence  
19 supports the following conclusions of the HO and the SRO: (1) the interim IEP provided services  
20 comparable to the California IEP; (2) the interim IEP provided Sterling with a FAPE; and (3)  
21 Plaintiffs were not entitled to reimbursement for the cost of employing the private DHH service  
22 provider. The court considers each of these issues below.

#### 23 **A. “Comparable” Services**

24 Pursuant to IDEA, where a student receiving IDEA services transfers interstate, the local  
25 education agency in the new state must provide the student with a FAPE, including services  
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1 comparable to those provided in the original state. 20 U.S.C. § 1414(d)(2)(C)(i)(II). Specifically, §  
2 1414(d)(2)(C)(i)(II) provides as follows:

3 In the case of a child with a disability who transfers school districts within the same  
4 academic year, who enrolls in a new school, and who had an IEP that was in effect in  
5 another State, the local educational agency shall provide such child with a free  
6 appropriate public education, including services comparable to those described in the  
7 previously held IEP, in consultation with the parents until such time as the local  
8 educational agency conducts an evaluation pursuant to subsection (a)(1), if determined  
9 to be necessary by such agency, and develops a new IEP, if appropriate, that is  
10 consistent with federal and State law.

11 *Id.* The applicable state law, Nevada Administrative Code section 388.263(2), mirrors the federal  
12 statute.

13 Under Nevada Administrative Code section 388.275, while the school district determines  
14 whether a child who was eligible for special education services in another state is eligible to receive  
15 special education services in Nevada, the school district may develop an interim IEP for the child.  
16 Nev. Admin. Code § 388.275(1). If the school district determines that the child is eligible to  
17 receive special education in Nevada, within thirty (30) days of the development of the interim IEP  
18 the school district must develop an annual IEP. Nev. Admin. Code § 388.275(2).

19 This dispute centers around the meaning of “comparable” services, as used in 20 U.S.C. §  
20 1414(d)(2)(C)(i)(II). Plaintiffs argue that to provide services “comparable” to those in the  
21 California IEP, WCSD must provide DHH services in the home, as the California IEP did. In  
22 contrast, WCSD maintains that “comparable” services means similar services, and that nothing  
23 requires it to provide in-home DHH therapy where it can provide substantially the same therapy at  
24 Sterling’s local school. Agreeing with WCSD, the HO concluded that “comparable” services  
25 means similar services rather than identical services. (Admin. R. at 287.) Based on the evidence  
26 before it, the HO found WCSD had provided comparable services because only the location, not  
the substance, of the DHH services had changed. (Admin. R. at 285.) The SRO confirmed the  
HO’s reasoning and conclusion. (Admin. R. at 476-84.)

1           Where the meaning of a statute is plain and unambiguous, the clear language of the statute  
2 controls. *United States v. Maria-Gonzalez*, 268 F.3d 664, 668 (9th Cir. 2001) (*citing Aragon-Ayon*  
3 *v. I.N.S.*, 206 F.3d 847, 851 (9th Cir. 2000)). In addition, in construing statutory language, courts  
4 should defer to the position and interpretation of the Office of Special Education Programs of the  
5 Department of Education (“OSEP”), the agency responsible for monitoring and administering the  
6 IDEA. *Ms. S. v. Vashon Island School District*, 337 F.3d 1115, 1134 (9th Cir. 2003) (*citing Honig*  
7 *v. Doe*, 484 U.S. 305, 325 n.8 (1988)), *superceded by statute on other grounds*, IDEA, Pub. L. No  
8 105-17, 111 Stat. 81, *as recognized in M.L. v. Fed. Way Sch. Dist.*, 341 F.3d 1052, 1063 n.7 (9th  
9 Cir. 2003).

10           In 71 Fed. Reg. 46540 (Aug. 14, 2006), OSEP notes that while several commentators  
11 requested clarification of the meaning of “comparable” services, clarification was not necessary  
12 because “the Department interprets ‘comparable’ to have the plain meaning of the word, which is  
13 ‘similar’ or ‘equivalent.’” *Id.* at 46681. When a child transfers to a new public agency from  
14 another state, “comparable services means services that are ‘similar’ or ‘equivalent’ to those that  
15 were described in the child’s IEP from the previous public agency, as determined by the child’s  
16 newly-designated IEP Team in the new public agency.” *Id.*

17           Both the HO and the SRO deferred to OSEP’s conclusion that “comparable” services  
18 plainly means “similar” or “equivalent” services. Similarly, this court finds that “comparable”  
19 services within the meaning of 20 U.S.C. § 1414(d)(2)(C)(i)(II) means that, in the interim IEP,  
20 WCSD needed to provide services that were “similar” or “equivalent” to those provided for in the  
21 California IEP. Thus, WCSD was not obligated to adopt the California IEP in its exact form. All  
22 that the IDEA requires is that the interim IEP be similar or equivalent to the California IEP.

23           A comparison of the interim IEP and the California IEP indicates that the only difference  
24 between the two IEPs is the location of the DHH services. Thus, the issue is whether, by changing  
25 the location of DHH services, WCSD nonetheless provided similar or equivalent services in the  
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1 interim IEP.

2 Plaintiffs argue that DHH services at Sterling's local school are substantially different than  
3 DHH services at their home. They note that their home has been altered to ensure that it is  
4 acoustically sound. Carrie Austin, the private DHH teacher hired on November 20, 2006, testified  
5 that the transition from home DHH teaching to in-school DHH instruction might hamper Sterling's  
6 progress (Admin. R. at 110:12-111:10.) She also testified to Sterling's comfort in the home setting,  
7 noting that their home provides few distractions for Sterling, enabling him to fully concentrate on  
8 the tasks before him, and to the importance of having backup equipment readily available. (Admin.  
9 R. at 112:16-114:12.) Based on this information, Ms. Austin concluded that Sterling could not  
10 receive comparable DHH service at the school. (Admin. R. at 118:21-119:13.)<sup>2</sup>

11 Plaintiffs also argue that the school setting offered by WCSD is inappropriate for DHH  
12 therapy. They note safety, acoustic, and lighting concerns with the room offered by WCSD. In  
13 particular, Plaintiffs note that the fluorescent light might interfere with Sterling's cochlear implant.  
14 They cite to the implant's user manual, which states that fluorescent lighting may interfere with the  
15 device, causing buzzing sounds or distorted speech. (Admin R. at 305.) Plaintiffs assert that this  
16 setting could interfere with Sterling's DHH therapy by distracting him and making it difficult for  
17 him to hear properly. Plaintiffs first expressed these concerns after bringing Sterling to the  
18 elementary school for speech and language therapy on December 13, 2006. (Admin. R. at 296.)  
19 Three days later, WCSD located a different room in which to conduct its sessions with Sterling. *Id.*

20 Plaintiffs argue that WCSD should have provided a room appropriate for DHH therapy on

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22 <sup>2</sup> The HO determined that Ms. Austin's testimony was less credible than the testimony of the other  
23 WCSD employees. In particular, the HO noted Ms. Austin's continuing pecuniary interest in the outcome of  
24 the proceedings and her failure to read the interim IEP or the latest California IEP. The SRO accepted the HO's  
25 credibility determination. Because the HO is in the best position to make determinations regarding a witness's  
26 credibility, this court defers to the HO's conclusion with regard to the weight due to Ms. Austin's testimony.  
Nonetheless, the court notes that it also recognizes Plaintiffs' arguments on appeal, particularly those  
challenging Ms. Austin's pecuniary interest in the outcome of the proceedings. The court considers these  
arguments in weighing Ms. Austin's testimony and the conclusions of the HO.

1 November 20, 2006, not on December 16, 2006, only days before the interim IEP was to expire.  
2 However, on November 20, 2006, immediately after the implementation of the interim IEP,  
3 Plaintiffs unilaterally hired a private DHH service provider to come to their home and assist  
4 Sterling. Plaintiffs did not even consider WCSD's offered room until December 13, 2006, when  
5 they first brought Sterling to the elementary school for speech and language therapy. Within three  
6 days of Plaintiffs' complaint, WCSD provided a new, appropriate room. Thus, upon hiring the  
7 private DHH service provider, Plaintiffs appear to have immediately rejected WCSD's offer to  
8 provide DHH services at the elementary school. In light of this rejection, Plaintiffs' argument  
9 regarding the appropriateness of the room is unpersuasive. Notably, upon WCSD's decision to  
10 offer DHH services at the elementary school, Plaintiffs could have immediately, or within a  
11 reasonable amount of time, gone to the school to review the room. If they were dissatisfied with  
12 the room, WCSD would have had the opportunity to find an appropriate room in which to provide  
13 Sterling with DHH services throughout the entirety of the interim IEP.

14 In opposition, WCSD argues that the interim IEP provided services comparable to those  
15 offered in the California IEP, and that no special education reason required them to provide in-  
16 home DHH therapy. A WCSD DHH teacher testified that the goals and substance of the interim  
17 IEP were identical to the California IEP. (Admin. R. at 99:2-14.) The only difference between the  
18 two was the location of DHH services. *Id.* In addition, Sheri Bilewitz, Sterling's DHH teacher in  
19 California, indicates that she provided DHH services at Plaintiffs' home "out of convenience for  
20 both mom and myself as well as the fact that he was progressing in the home and there were no real  
21 distraction." (Admin. R. at 324.) She also added that "Sterling would progress in any environment  
22 as long as it was quiet and non-distracting." *Id.* Further, WCSD maintains that providing DHH  
23 services at the elementary school would provide additional benefits, including opportunities for  
24 peer modeling, reciprocal play, group interaction, and role modeling. (Admin. R. at 71:9-18;  
25 99:23-100:3.)

1 After careful review of the parties' arguments, the evidence, and the administrative  
2 decisions below, the court finds that a preponderance of the evidence supports the HO and SRO's  
3 conclusion that the in-school DHH services offered in the interim IEP were similar or equivalent to  
4 the home-based DHH services provided for in the California IEP. Although the conditions at  
5 Sterling's local school may not have been ideal, IDEA does not require a school district to provide  
6 the best available or optimal educational setting. *Smith*, 15 F.3d at 1524 (citations and internal  
7 quotations omitted). Instead, it requires the school district to provide a "floor of opportunity" to  
8 give educational benefits to the handicapped child. *Id.* The evidence indicates that while the exact  
9 location of the services was different, the substance and goals of the DHH services was the same.  
10 In light of this substantial similarity in the substance of the DHH services, the additional benefits  
11 provided by DHH services at the elementary school, and the deference due to local and state  
12 officials' educational policy determinations, the court finds that the interim IEP provided services  
13 comparable to those provided in the California IEP.

#### 14 **B. Free Appropriate Public Education**

15 Although the court has concluded that the interim IEP provided services comparable to the  
16 California IEP, the inquiry does not end here. Instead, the court must next considers whether the  
17 interim IEP provided Sterling with a FAPE. Generally, the inquiry into determining whether a  
18 child has received a FAPE is twofold. *Rowley*, 458 U.S. at 206. First, the court must determine  
19 whether the state has complied with the procedural requirements of IDEA. *Id.* Second, the court  
20 must determine whether "the [IEP] . . . was reasonably calculated to enable the child to receive  
21 educational benefits." *Id.* at 207. Here, Plaintiffs do not allege any procedural flaws in the  
22 administrative decision-making process followed below. As a result, this court proceeds directly to  
23 consider whether WCSD has met the substantive component of IDEA. Specifically, the court  
24 considers whether the interim IEP was reasonably calculated to enable Sterling to receive  
25 educational benefits.

1 Congress enacted IDEA to ensure that children with disabilities have access to a free  
2 appropriate public education. 20 U.S.C. § 1400(D). Nonetheless, “[a]n appropriate education does  
3 not mean the absolutely best or potential-maximizing education for the individual child.” *Smith*, 15  
4 F.3d at 1524 (citations and internal quotations omitted). Instead, states must provide a “basic floor  
5 of opportunity through a program individually designed to provide educational benefit to the  
6 handicapped child.” *Id.* A school district provides a FAPE “by providing personalized instruction  
7 with sufficient support services to permit the child to benefit educationally from the instruction.”  
8 *Rowley*, 458 U.S. at 203.

9 After careful consideration of the record on appeal and the cited evidence, and recognizing  
10 the deference due to state and local education agencies in forming educational policy, the court  
11 finds that the interim IEP was reasonably calculated to enable Sterling to receive educational  
12 benefits. As noted, IDEA requires the school district to provide a “basic floor of opportunity,” not  
13 the absolutely best educational setting for the child. As discussed above, the interim IEP called for  
14 one-on-one DHH therapy, set the same goals as the California IEP, and was virtually identical in  
15 substance to the California IEP. Moreover, the court has found that the interim IEP provides  
16 services comparable to the California IEP, and this is the only basis upon which Plaintiffs challenge  
17 the interim IEP as denying Sterling a FAPE. Accordingly, the court finds that the interim IEP  
18 provided Sterling with a FAPE.

### 19 C. Reimbursement

20 Finally, Plaintiffs challenge the HO and SRO’s denial of their right to reimbursement for  
21 the payments made to the private DHH services provider. If a school district denies a student a  
22 FAPE, the court may order the school district to provide compensatory education to the student.  
23 *Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F.3d 1489, 1496-97 (9th Cir. 1994). Having  
24 found that the interim IEP met the requirements of IDEA and provided Sterling with a FAPE, the

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1 court finds that Plaintiffs are not entitled to reimbursement for the private services.

2 IT IS THEREFORE ORDERED that Plaintiffs' Appeal (#1) is hereby DENIED.

3 The final decision of the State Review Officer is AFFIRMED.

4 IT IS SO ORDERED.

5 DATED this 10th day of November, 2008.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE